

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 133 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

CHIMANLAL GOVINDJI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR NALIN K THAKKER for Petitioner

MR.N.N.PANDYA PUBLIC PROSECUTOR for Respondents.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 26/02/96

ORAL JUDGEMENT

This Revision Application is directed against the

judgment and order dated February 28,1986 passed by the learned Addl. Sessions Judge, Nadiad, in Criminal Appeal No.18 of 1985, whereby the learned Additional Sessions Judge confirmed the conviction and sentence of the petitioner-accused for the offence under section 7 read with section 16(1)(a) of the Prevention of Food Adulteration Act, 1954. The learned Judicial Magistrate, First Class, Anand, by his judgment and order dated 15.3.1985 held the petitioner-accused guilty and convicted him for the said offence and sentenced him to undergo rigorous imprisonment for three months.

At the outset, it may be stated that the petitioner-accused expired on September 12,1986. By the order of this Court (Coram: M.B.Shah,J.(as he was then)) dated February 4,1988, the heirs and legal representatives of the deceased accused were allowed to be substituted as the petitioners. Apart from that, the revision application will not abate due to death of the petitioner-accused, in view of the ratio laid down in the decision of the Supreme Court, reported in AIR 1971 SC 66.

The deceased Chimanlal Govindji Thakker was carrying on a business of grocery in the name and style of Chirag Kirana Store. The said shop was opened in February 1979 and was closed down in the year 1982 by winding up the business.

The Food Inspector of Anand Municipality, respondent No.2 herein, visited the shop of the accused on November 19,1981 with the Peon of the Municipality, Shri J.R. Rabari. The complainant-Food Inspector purchased 450 grams of chilly powder from the accused with instruction in writing that the said sample was collected for the purpose of analysis by sending it to Public Analyst, Baroda. The sample so collected in presence of the Panch witnesses by paying requisite sale price of Rs.6.75 ps. was separated in three equal parts and each part of sample powder was placed in clean dry bottles. The said bottles were then properly packed, sealed and fastened to prevent leakage of the contents in transit. The paper-slip duly signed by the complainant and the panch witnesses were affixed on each of the bottles. A Panchnama was drawn in respect of exercise of the said collection of the sample. One of the containers was sent on November 20,1981 to Public Analyst, Baroda, for the purpose of analysis with a Special Messenger. By the report dated 5.12.1981, exh.25, by the Public Analyst, Baroda, It was reported that the sample of chilly powder did not conform to the standards laid down under the Prevention of Food Adulteration Rules, 1955 and that the sample of chilly powder was mixed with plenty of paddy husk

(kusaka) and rice particles. Thus, the sample was found to be adulterated.

The Food Inspector, therefore, lodged the complaint against the petitioner-accused for the aforesaid offences on December 31, 1981 in the Court of the learned Judicial Magistrate, First Class at Anand.

The accused pleaded not guilty to the charge exh.41 with regard to the aforesaid offence of adulteration of chilly powder. By his further statement in writing at exh.53, the accused, inter alia, contended that he used to purchase prepared chilly powder from elsewhere and used to deal in the same. He denied having committed any offence.

The learned Judicial Magistrate, First Class, Anand, by his aforesaid judgment and order, convicted and sentenced the accused as aforesaid. The accused preferred the appeal against the said conviction and sentence in the Sessions Court at Nadiad. The said appeal came to be dismissed and the order of conviction and sentence passed by the learned Magistrate was confirmed. It is against these concurrent orders of conviction and sentence that the present Revision Application is preferred.

I have heard Mr.N.K.Thakkar, learned Advocate for the petitioner, at length. I have also heard Mr.H.P.Sharma, the complainant-Food Inspector, who is personally present in the Court pursuant to the order of this Court on 2.2.1996. I have also heard Mr.N.N.Pandya, the learned Addl. Public Prosecutor appearing for the respondents.

I have perused the impugned judgments of both the Courts below and the relevant evidence and material on record.

Mr.Thakkar, for the petitioner, having referred to the Public Analyst's report at Exh.25, submitted that no precise percentage of paddy husk and rice particles are stated in the report. He further submitted that the Public Analyst by means of microscopic test, concluded that the sample of chilly powder contained plenty of paddy Kuska and rice-particles. Apart from the percentage of such Kuska or particles, such a microscopic test is not contemplated under the Rules relating to the analysis of the chilly powder.

As per the Definitions and Standards of Quality as provided in APPENDIX B of the Prevention of Food Adulteration Rules, 1955, the standard with regard to Chillies (Lal mirchi) Powder is provided in Item A.05.05.01. It reads as under:-

"A.05.05.01--CHILLIES (Lal mirchi) POWDER means the

powder obtained by grinding clean dried chilli pods of *Capsicum frutescens* L/*Capsicum annum*. The chilli powder shall be dry, free from dirt, mould growth, insect infestation, extraneous matter, added colouring matter and flavouring matter. The chilli powder may contain any edible oil to a maximum limit of 2 per cent by weight under a label declaration for the amount and the nature of oil used. The chilli powder shall conform to the following standards:

Moisture.....Not more than 12.00 per cent by weight
by weight.

Total ash.....Not more than 8.00 per cent by
weight.

Ash insoluble in dilute HC/....Not more than 1.3 per
cent by weight.

Non-volatile ether extract.....Not less than 12.0 per
cent by weight.

Crude fibre...Not less than 30.0 per cent by weight."

Having regard to the aforesaid detail and standard relating to chillies powder, it is clear that microscopic test is not provided therein. There is, therefore, substance in the submission of Mr.Thakkar that the Public Analyst adopted the test by means of microscopic test, which is not provided by the Legislature. It is also doubtful whether such microscopic test is a scientific test or otherwise. There is no other evidence available on record, inasmuch as there is no method to check such test. It may be an unreasonable test even. Suffice it to state that the Legislature has not approved of such test. Therefore, the conviction of the petitioner for the offence under section 7 read with section 16 of the Prevention of Food Adulteration Act is unsustainable. In this connection, Mr.Thakkar has relied upon the decision in the case of *Bhim Sen v. State of Punjab*, AIR 1976 Supreme Court 281. It was a case of aerated water. The Supreme Court held that according to standard of quality laid down in Item A-01-01 of Appendix B of the Rules, carbonated water which is the same as aerated water, may or may not contain sugar. If it does not contain sugar, it would not in any way detract from the standard of quality prescribed for aerated water in this item. The requirement of sucrose content being not less than 5 per cent under the proviso to that item does not apply where what is sold is not 'sweetened aerated water' but merely 'aerated water' which may or may not contain sugar.

Mr.Thakkar also relied upon the case of State v.Guni Lal Jeeva Shah, reported in AIR 1964 Punjab 475. It is held by the Supreme Court in the case that in the case of ground chillies, the presence of foreign organic matter is not wholly ruled out. Where, therefore, the ground chillies sold by the accused are alleged to have been highly adulterated with wheat bran, it is essential on the part of the Public Analyst to specify the percentage of the wheat bran in the sample sent for analysis, particularly when the foreign organic matter is such that it is not injuries to human health.

Relying on the aforesaid observation, Mr.Thakkar submitted that in the instant case also there is no specific percentage of husk or rice-particles found in the sample nor there is any evidence on record that the consumption of such chilly powder would be injurious to human health.

The Food Inspector, Mr.H.P.Sharma has admitted in his cross-examination that the accused purchased the prepared chilly powder from elsewhere. The Food Inspector did not inquire as to from whom such powder was purchased by the accused. Thus, no attempt is made on behalf of the complainant-Food Inspector to implead the real manufacturer of the chilly powder.

There is also another aspect of the case, wherein Rule 9-A of the Prevention of Food Adulteration Rules, 1955 has not been complied with. The said Rule provides that the Local (Health) Authority shall within a period of ten days after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under sub-rule (3) of Rule 7, by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the Food Inspector, and simultaneously also to the person, if any, whose name, address and other particulars have been disclosed under Section 14-A of the Act. It is evident from the record that such notice as contemplated under Rule 9-A was sent to the accused on January 19,1982 by Registered A.D. The complaint was filed by the Food Inspector against the accused on 31.12.1981. Thus, admittedly, the notice, as required under section 9-A of the Rules was not sent to the accused within 10 days, inasmuch as it was sent after one month and 18 days. Thus, there is a clear breach of Rule 9-A of the Rules. The accused is also entitled to acquittal on this ground.

Lastly, Mr.Thakkar submitted that the circumstances appearing against the accused person were not pointed out to the accused while recording his further statement under section 313 of the Code of Criminal Procedure, 1973. According

to Mr.Thakkar, the report of the Public Analyst in respect of the sample being found adulterated was not pointed out to the accused. However, when the accused is entitled to acquittal on the aforesaid grounds, I am not expressing any opinion with regard this last submission of Mr.Thakkar about not seeking explanation about the circumstances appearing against the accused.

For the foregoing reasons, the Revision Application is allowed.The impugned judgments and orders of the Courts below are quashed. The original accused being no more, there is no question of ordering cancellation of the bail-bonds. Fine, if paid, be refunded to the heirs and legal representatives of the original accused who are brought on record, as observed herein above. Rule is accordingly made absolute.
